

HOUSE BILL 778

By McCormick

AN ACT to amend Tennessee Code Annotated, Title 4, Chapter 29 and Title 17, Chapter 4, relative to creating a Judicial Advisory Panel to assist the governor in his selection of qualified individuals to fill vacancies in various judicial offices.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. The legislature intends that the judicial advisory panel created herein should be composed of individuals, both attorneys and non-attorneys, representative of the various persons and organizations that have an interest in an effective, efficient, and impartial judicial system.

SECTION 2. Tennessee Code Annotated, Section 17-4-101, is amended by deleting the section in its entirety and substituting the following new language:

(a) It is the declared purpose and intent of the general assembly by the passage of this chapter to assist the governor in finding and appointing the best qualified persons available to serve on the appellate and trial courts of Tennessee, to assist the electorate of Tennessee to elect the best qualified persons to the courts, and to improve the administration of justice.

(b) The judicial advisory panel authorized in this chapter is designed to represent Tennesseans and organizations doing business in Tennessee that have an interest in an effective, efficient, and impartial judiciary.

SECTION 3. Tennessee Code Annotated Section, 17-4-102, is amended by deleting this section in its entirety and substituting the following new language:

(a) There is established as a part of the judicial branch of the state a judicial advisory panel to be composed of eleven (11) members as follows:

(1) Three (3) members from each of the different grand divisions of the state, and two (2) at large members;

(2) Five (5) of the eleven (11) members must be attorneys licensed to practice law in the state of Tennessee; and

(3) Four (4) members who shall not be attorneys.

(b) The speaker of the senate shall appoint five (5) members of the judicial advisory panel, and the speaker of the house shall appoint five (5) members of the judicial advisory panel. The speakers shall jointly ensure that the members appointed meet the criteria set forth in section (a)(1), and that the persons appointed approximate the population of the state in respect to race and gender. The final member of the panel shall be the Tennessee secretary of state, or the secretary's designee.

(c) To stagger the terms of the commission members, the speakers shall make the initial appointments in the following manner:

(1) The initial terms of the members from the western grand division shall be for two (2) years;

(2) The initial terms of the members from the middle grand division shall be for four (4) years;

(3) The initial terms of the members from the eastern grand division shall be for six (6) years; and

(4) The initial terms of the at-large members shall be for four (4) years.

SECTION 4. Tennessee Code Annotated, Section 17-4-103, is amended by deleting this section in its entirety and substituting the following new language:

Each member of the judicial advisory panel shall be a resident of Tennessee. Each lawyer member shall be a lawyer in good standing with the Tennessee supreme court.

SECTION 5. Tennessee Code Annotated, Section 17-4-104, is amended by deleting this section in its entirety and substituting the following new language:

(a) No member of the judicial advisory panel shall be an elected member of the Tennessee general assembly, the governor or an employee of the executive branch of the state of Tennessee, a judge or employee of a judge, or the Tennessee attorney general or an employee of the Tennessee attorney general's office.

(b) Any member of the panel who obtains a position delineated in subsection (a) shall ipso facto vacate the member's office as a member of the panel.

SECTION 6. Tennessee Code Annotated, Section 17-4-105, is amended by deleting this section in its entirety and substituting the following new language:

(a) The term of office of each member of the judicial advisory panel shall begin on July 1, 2009.

(b)

(1) As soon as practicable after July 1, 2009, the panel shall meet in organizational session as convened by the chief justice of the supreme court.

(2) At the first organizational meeting, the chief justice shall preside as temporary chair and the permanent chair shall be elected from the membership of the panel.

(3) If the chief justice is unable to convene the panel or serve as temporary chair, the chief justice may designate another member of the supreme court to so serve.

(c) The panel may elect such other officers as it deems necessary and proper; and may adopt and from time to time, amend bylaws and rules of procedure for the conduct of its business and the discharge of its duties.

(d) The panel may employ such secretarial and clerical assistance as it deems necessary.

SECTION 7. Tennessee Code Annotated, Section 17-4-106, is amended by deleting the section in its entirety and substituting the following new language:

(a) Each subsequent term of a panel member is four (4) years.

(b) A panel member is eligible for reappointment.

SECTION 8. Tennessee Code Annotated, Section 17-4-107, is amended by deleting the section in its entirety and substituting the following new language:

A vacancy on the judicial advisory panel shall be filled in the same manner as the original appointment for the remainder of the unexpired term.

SECTION 9. Tennessee Code Annotated, Section 17-4-108, is amended by deleting the section in its entirety and substituting the following new language:

(a) Members of the judicial advisory panel shall not receive any compensation for their services but shall be reimbursed for their official travel expenses pursuant to policies and guidelines promulgated by the supreme court.

(b) Subject to budgetary restrictions, the administrative office of the courts shall pay or reimburse the necessary expenses authorized or incurred by the judicial advisory panel or its members in the performance of the panel's duties, pursuant to policies and guidelines promulgated by the supreme court.

SECTION 10. Tennessee Code Annotated, Section 17-4-109, is amended by deleting the section in its entirety and substituting the following new language:

(a)

(1) When a vacancy occurs after July 1, 2009, in one of the intermediate courts, the judicial advisory panel shall, at the earliest practicable date, hold a public meeting in the grand division from which such vacancy is to be filled.

(2) When a vacancy occurs after July 1, 2009, in the supreme court, the judicial advisory panel shall, at the earliest practical date, hold a public meeting in Nashville.

(b) Notice of the time, place and purpose of the meeting shall be given by newspapers, radio news, and television news and by such other means as the panel deems proper.

(c) Any member of the public, both lay and attorney, shall be entitled to attend the meeting and express orally or in writing suggestions of possible nominees and such citizen's approval of or objections to any suggested nominee for the judicial vacancy. Any licensed attorney may appear and make a statement, oral or written, in support of such attorney's own nomination.

(d) After one (1) public hearing the panel may hold such additional private or public meetings as it deems necessary. The panel shall make independent investigation and inquiry to determine the qualifications of possible nominees for the judicial vacancy and shall endeavor to encourage qualified attorneys to accept nomination and agree to serve if appointed to the judicial vacancy.

(e) As soon as practicable and not later than sixty (60) days from receipt of written notice from the governor that a vacancy has occurred, the panel, in public or private meeting, by a majority vote shall select three (3) persons whom the panel deems best qualified and available to fill the vacancy and certify the names of the three (3) persons to the governor as nominees for the judicial vacancy. However, if an incumbent judge fails to file a written declaration of candidacy as required by § 17-4-114 or § 17-4-115, or if the commission is reliably informed that a vacancy is impending for another reason, then the commission may meet, select such persons and certify the names of such nominees to the governor prior to actual receipt of written notice from the governor that a vacancy has occurred.

(f) The judicial advisory panel, in compiling its list of nominees for a supreme court position, shall assure that the requirements of article VI, section 2, of the Tennessee constitution are satisfied.

SECTION 11. Tennessee Code Annotated, Section 17-4-110, is amended by deleting the section in its entirety and substituting the following new language:

(a) All nominees of the judicial advisory panel must be attorneys licensed to practice in the state of Tennessee and be fully qualified under the constitution and statutes of Tennessee to fill the office for which they are nominated.

(b) A candidate who has been defeated in any election held under this chapter is not eligible for re-nomination to the office for which the candidate was defeated until after one (1) regular August election has occurred.

SECTION 12. Tennessee Code Annotated, Section 17-4-111, is amended by deleting the section in its entirety and substituting the following new language:

A member of the judicial advisory panel is not eligible to be nominated by the judicial advisory panel during the member's tenure and a six-month period after the conclusion of the member's tenure.

SECTION 13. Tennessee Code Annotated, Section 17-4-112, is amended by deleting the section in its entirety and substituting the following new language:

(a) When a vacancy occurs in the office of an appellate court after July 1, 2009, by death, resignation or otherwise, the governor shall fill the vacancy by appointing one (1) of the three (3) persons nominated by the judicial advisory panel. The governor shall make such an appointment within sixty (60) days after receipt of a list of the names of the three (3) persons nominated by the judicial advisory panel.

(b) The term of a judge appointed under this section shall expire on August 31 after the next regular August election occurring more than thirty (30) days after the vacancy occurs.

SECTION 14. Tennessee Code Annotated, Section 17-4-114, is amended by deleting the language", unless a contested election is required by subsection (c)" from subdivision (a)(3), by deleting the words "then the judicial evaluation commission shall not include an evaluation or

retention recommendation for the incumbent judge within the final report publicly disclosed pursuant to § 17-4-201(c), and" from subdivision (b)(2) and replacing subsections (c) and (d) with the following new subsections (c) and (d):

(c) If the judge's term of office is abbreviated because of death, resignation, or removal after the filing of a declaration of candidacy or prior to the third Thursday in May preceding the regular August general election, then the vacancy shall be filled in accordance with the provisions of § 17-4-112.

(d)

(1) If sixty percent (60%) or more of those voting on the question vote in favor of electing the candidate, the candidate is duly elected to the office for the remainder of the term of the predecessor and given a certificate of election.

(2) If less than sixty percent (60%) of those voting on the question vote against retaining the candidate in office, then a vacancy exists as of September 1 after the regular August election. The governor shall fill the vacancy from a group of three (3) nominees submitted by the judicial advisory panel as provided in § 17-4-112.

SECTION 15. Tennessee Code Annotated, Section 17-4-115, is amended by deleting subdivision (b)(2) and renumbering subdivision (b)(1) accordingly, and replacing subsections (c) and (d) with the following new subsections (c) and (d):

(c) If the judge's term of office is abbreviated because of the death, resignation, or removal after the filing of a declaration of candidacy or prior to the third Thursday in May preceding the regular August general election, then the vacancy shall be filled in accordance with the provisions of § 17-4-112.

(d)

(1) If sixty percent (60%) or more of those voting on the question

vote in favor of electing the candidate, the candidate is duly elected to the office for a full eight (8) year term and given a certificate of election.

(2) If less than sixty percent (60%) of those voting on the question vote against retaining the candidate in office, then a vacancy exists as of September 1 after the regular August election. The governor shall fill the vacancy from a group of three (3) nominees submitted by the judicial advisory panel as provided in § 17-4-112.

SECTION 16. Tennessee Code Annotated, Section 17-4-116, is amended by deleting subsections (a) (b) and (c) and adding the following language as new subsections (a), (b) and (c):

(a) If an incumbent appellate court judge, whether appointed or elected, fails to file a declaration of candidacy for election to an unexpired term or to a full eight (8) year term within the prescribed time, then a vacancy is created in the office at expiration of the incumbent's term effective September 1. In this event, the judicial advisory panel shall furnish a list of nominees for the office to the governor as provided by § 17-4-109. From such list, the governor shall appoint a successor to fill the vacancy effective September 1. The appointment is subject to the action of the electorate in the next regular August election. The appointee shall file a declaration of candidacy and be voted on as provided in §§ 17-4-114 and 17-4-115.

(b) If the vacancy occurs more than thirty (30) days before the regular August election preceding the end of the term, the appointee is subject to election as provided in §§ 17-4-114 and 17-4-115.

(c)

(1) If sixty percent (60%) or more of those voting on the

question vote in favor of electing the candidate, the candidate is duly elected to the office for the remainder of the unexpired term or a full eight (8) year term, as the case may be, beginning September 1, and the candidate shall be given a certificate of election.

(2) If less than sixty percent (60%) of those voting on the question vote against retaining the candidate in office, then the candidate may not take office on September 1, and a vacancy exists as of September 1 after the regular August election. The governor shall fill the vacancy from a group of three (3) nominees submitted by the judicial advisory panel as provided in § 17-4-112.

SECTION 17. Tennessee Code Annotated, Section 17-4-117, is amended by deleting the language "judicial selection commission" and substituting instead the language "judicial advisory panel," and by deleting the language "commission" and substitute the language "panel".

SECTION 18. Tennessee Code Annotated, Section 17-4-118, is amended by deleting the section in its entirety and by substituting instead the following new language:

(a) After July 1, 2009, when a vacancy occurs in the office of a state trial court judge by death, resignation, or otherwise, the governor shall fill the vacancy by appointing one (1) of the three (3) persons nominated by the judicial advisory panel. The governor must make such appointment within sixty (60) days after receiving the list of the persons nominated by the judicial advisory panel.

(b) The term of a judge appointed under this section shall expire on August 31 after the next regular August election occurring more than thirty (30) days after the vacancy occurs.

(c) The judicial advisory panel shall follow the processes established in § 17-4-109 except the panel shall hold the public meeting in the judicial district from which such

vacancy is to be filled.

(d) If the judicial district is one (1) of the five (5) smallest judicial districts according to the 2000 federal census or any subsequent federal census, the judicial advisory panel may submit two (2) names to the governor.

(d) At the next regular August election occurring more than thirty (30) days after the vacancy occurs, the electorate shall elect a candidate to fill the remainder of the unexpired term or complete term, as provided in the general election law in title 2.

SECTION 19. Tennessee Code Annotated, Section 17-4-201, is deleted in its entirety.

SECTION 20. Tennessee Code Annotated, Section 4-29-232(a), is amended by adding the following as a new subdivision:

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Judicial advisory panel

SECTION 21. If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 22. If for any reason the judicial advisory panel created by this act ceases to exist, then all vacancies in any judicial position shall be filled by the governor and all Tennessee judges shall be elected by contested elections as provided in the general election law in title 2. The Tennessee secretary of state is empowered to enact any rules required to effectuate this provision.

SECTION 23. This act shall take effect July 1, 2009, the public welfare requiring it.